HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 3263 OF 2005

Dated : 28th April, 2006.

Between

M/S. Sri Vishnu Cements Ltd., rep. by its Managing

Director Sri M.Canappele

…..Petitioner

and

Mandal Revenue Officer, Mellacheruvu Mandal

Mellacheruvu, Nalgonda district and anor.

….Respondents.

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 3263 OF 2005

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ORDER:

This Writ Petition is filed seeking Writ of Mandamus, to direct the respondents not to evict the petitioner from the land admeasuring Ac.2.39 guntas in Sy.No. 157 of Dondapadu village in Mellacheruvu Mandal, Nalgonda District pursuant to the order of the Mandal Revenue Officer dated 20-9-1994 and to declare that the action of the first respondent in taking steps for eviction of the petitioner is contrary to the orders dated 24-11-1995 passed in Contempt Case No. 610 of 1994.

The petitioner, a company registered under the Companies Act, 1956, claims to have purchased subject land by registered sale deed dated 19-8-1985 from one

Nukala Chinnapapaiah and is in possession of the said land. It is stated that the said sale was also validated under Section 50-B of the A.P.(Telangana Area) Tenancy and Agricultural Lands Act, 1950. It is stated in the affidavit filed in support of the Writ petition, that earlier, on the ground that the order of eviction was passed in the year 1991 under the provisions of the of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, without conducting any enquiry, the petitioner had questioned the same in Writ Petition No. 17183 of 1991, which was allowed by setting aside the order of eviction passed by the Mandal Revenue Officer, by order dated 12-11-1993 and the first respondent was directed to hear the objections of the petitioner before passing fresh orders. It is the case of the petitioner, that the Mandal Revenue Officer, had again passed order dated 20-9-1994 without considering the objections filed by the petitioner. Therefore, alleging willful disobedience of order dated 12.11.1993 passed in Writ petition No. 17183 of 1991, the petitioner had filed Contempt Case No. 610 of 1994, wherein this Court, finding that order dated 20.9.1994 was passed in total derogation of the directions of this court contained in order dated 12.11.1993 and it amounts to contempt of court, disposed of the Contempt case imposing exemplary costs of Rs.5000/- on the respondent, by taking a lenient view. However, liberty was given to the petitioner to challenge the validity of the order dated 20.9.1994 passed by the respondent before the appellate authority by filing an appeal within a period of one month from the date of the said order, and if such an appeal was filed, the appellate authority was directed to dispose of the appeal on merits without raising the question of limitation.

It is further stated, that though the second respondent has individually filed suit in O.S.No.89 of 1987 on the file of the Court of District Munsif, Kodad for injunction claiming possession over the land in question, but, the same ended in dismissal with a finding that the plaintiff had not proved his possession for grant of injunction orders.

Counter affidavit is filed on behalf of the first respondent-Mandal Revenue Officer, as well as, the second respondent, who was subsequently impleaded in the writ petition as party-respondent. In the counter affidavits filed by the respondents, it is stated, that originally B.Sitharama Rao and G.Rama Rao were the owners and pattadars of the land covered by Sy. No. 157, ad measuring Ac.2.39 Gts situated in Dongapadu village of Huzurnagar Mandal, Nalgonda District and the grand father of

the second respondent, one Chinnamsetty Narsaiah was the protected tenant of the said land. It is further stated, that after conducting enquiry as provided under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, Certificate was issued under Section 38-E of the Act in proceedings No.A/401/75, dated 4-2-1977, declaring said Narsaiah as owner of the land in question by the competent authority, i.e. Additional Revenue Divisional Officer, Huzurnagar, Nalgonda District. It is further stated, that when the petitioner was claiming possession of the said land through its vendor, Nookala Chinna Papaiah, the second respondent filed an application under Section 98 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, for summary eviction of the occupants of the land. It is also stated, that when no action was taken on the said application, the second respondent approached this Court and filed Writ Petition No. 13753 of 1991 and on directions being issued for disposal of the said application after issuing notice, orders of eviction were passed, which had been questioned by the petitioner in Writ Petition No. 17183 of 1991, which was disposed of with a direction to consider the objections and pass orders. It is also stated, that in the light of the directions issued by this Court in the above Writ Petition, after considering the objections filed by the petitioner, further orders of eviction were passed on 20-9-1994, which were subject matter of contempt case, wherein liberty was given to the petitioner to file an appeal against the order of eviction dated 20.9.1994. It is the case of the respondents that the petitioner had not questioned the said eviction order dated 20-9-1994 by filing an appeal, in spite of the permission being given to the petitioner to file an appeal de hors the bar of limitation, in Contempt Case No.610 of 1994, and, as the petitioner did not prefer appeal before the appellate authority, the order dated 20.9.1994 has became final.

Heared Sri C.Ramachandra Raju, learned Counsel appearing for the petitioner, learned Government Pleader appearing for the first reapondent and Sri V.Ravikiran Rao, learned Counsel appearing for second respondent.

It is submitted by Sri C.Ramachandra Raju, learned Counsel appearing for the petitioner, that as much as the earlier order dated 20-9-1994 was found to be in violation of the directions of this Court and more particularly when the first respondent was found fault for his contemptuous attitude in C.C.No. 610 of 1994, it is not open for the first respondent to evict the petitioner from the land in question. It

is further submitted, that in any event, as much as the suit in O.S.No. 89 of 1987 also ended in dismissal, it is also not open for the second respondent to claim possession of the said land.

On the other hand, it is submitted by the learned Government Pleader appearing for the first respondent, and, Sri V.RviKiran Rao, learned Counsel appearing for the second respondent, that when the second respondent was declared as statutory tenant and he was issued Certificate under Section 38-E of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, the petitioner cannot claim any right over the said land by virtue of its purchase under registered sale deed dated 19-8-1985. It is submitted, that when the petitioner was claiming possession, the second respondent filed application for summary eviction as provided under Section 98 of the AP (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and after conducting enquiry, order of eviction was passed and when the said order of eviction dated 20-9-1994 became final, it is not open for the petitioner to seek direction against the first respondent not to evict from the land in question. It is further submitted that though, earlier, Contempt Case was disposed of by imposing fine on the first respondent, but, however, the eviction order dated 20-9-1994 was not set aside, and, in spite of the fact that though the petitioner was given opportunity to question the said order before the appellate authority, but he did not choose to file appeal, and, having failed to question the same within the time stipulated therein, it is not open for it to seek direction at this point of time.

It is needless to state that the law applicable as to the relationship of land-lords and tenants in respect of agricultural lands situated in the area in question is the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The petitioner is claiming right over the said land by virtue of its purchase in the year 1985 under the registered sale deed. However, the second respondent is claiming as protected tenant of the said land based on the certificate issued to him under Section 38-E of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, and, order of eviction was passed under Section 98 of the Act. From the counter affidavits filed on behalf of the respondents, it is clear, that the second respondent was granted certificate under the provisions of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and the said certificate has become final. When the petitioner was claiming possession over the said land by virtue of purchase from

Nooka Chinnappaiah, the second respondent had filed the application for eviction under Section 98 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. Questioning the orders passed in the said application, the petitioner had filed Writ Petition No.17183 of 1991 and this Court by order dated 12-11-1993, while disposing of the said Writ Petition, directed the first respondent-Mandal Revenue Officer to hear the objections of the petitioner and pass appropriate orders. Subsequently, when the orders of eviction dated 20-9-1994 were passed, the petitioner had not filed any appeal against the said order, but, however, had filed Contempt Case No. 610 of 1994 pleading that inspite of specific orders of this Court, objections filed by the petitioner were not considered before passing the order of eviction, which was disposed of by giving liberty to the petitioner to prefer appeal against the order in the writ petition within a period of one month from that date. It is not in dispute that inspite of such a direction, the petitioner had not preferred any appeal within the time stipulated. On the other hand, nearly after ten years of disposing of the Contempt Case No.610 of 1994 by order dated 24-11-1995, the petitioner has filed this Writ Petition in the year 2005 seeking direction not to evict him from the land in question pursuant to the order dated 20-9-1994. In this regard, it is submitted by Sri C.Ramachandra Raju, learned Counsel for the petitioner, that as much as the order of eviction dated 20-9-1994 was passed in violation of the directions issued by this Court, the petitioner cannot be evicted from the land in question. But, however, the fact remains that the said order was not set aside either by this Court or by any other authority and in spite of an opportunity given to the petitioner in the contempt case to file an appeal without reference to the bar of limitation, the petitioner had not filed any appeal. It is relevant to extract the operative portion of the order dated 24-11-1995 in Contempt Case No. 610 of 1994, which reads thus:

> *"…..It is also made clear that the petitioner is at liberty to challenge the validity of the order made by the respondent dt. 20-9-1994 before the appellate authority and if such an appeal is preferred before the appellate authority within a period of one months from today, the appellate authority is directed to dispose of that appeal, on merits, without raising the question of limitation*."

Therefore, as the petitioner had not filed any appeal In spite of the fact that this Court permitted the petitioner to prefer appeal by granting one month time, the order of

eviction has become final and, nearly after ten years, the petitioner cannot seek relief from this Court to direct the first respondent not to evict him from the land in question. In effect, the petitioner is again questioning the order dated 20-9-1994 by filing this Writ Petition in the year 2005. There is absolutely no valid explanation for not taking steps nearly for ten years. Though the learned Counsel sought to rely on the findings recorded by the Civil Court in O.S.No. 89 of 1987, but it is to be noticed that the said suit was filed only for injunction simpliciter, wherein the Civil Court has recorded the finding that the plaintiff failed to prove his possession and kept it open to him to claim restoration of the possession. So far as tenancy rights are concerned, in view of the provision under Section 99 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, no civil Court shall have jurisdiction to settle, decide or deal with any question relating to tenancy rights over the agricultural lands. In that view of the matter, as the said suit was only for injunction simpliciter and eviction order passed under Section 98 of the Act has became final, findings recorded by the Civil Court in O.S.No. 89 of 1987 will not support the case of the petitioner.

Further, the learned Counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of *Delhi Development Authority Vs. Skipper Construction Company (P) Limited*, wherein it was held that contemnor should not be permitted to enjoy/keep fruits of his contempt, but, having regard to the facts and circumstances of the case on hand, the said judgment of the Apex Court will not support the case of the petitioner.

The findings recorded in the contempt case by this court were only with regard to the implementation of the order passed in the writ petition, and, they, in no way, relate to the adjudication as to the validity or legality of the order dated 20.9.1994 passed by the respondent, which can be done only in the appeal. The petitioner, though was given opportunity to prefer appeal, it did not choose to prefer any appeal allowing order dated 20.9.1994 to become final, and, further, when the order dated 20-9-1994 became final, after this length of time, the petitioner cannot seek any direction not to evict it from the land in question pursuant to the said order.

For the foregoing reasons, I do not find any merit in this Writ Petition for grant of relief as prayed for.

The Writ Petition is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 28th April, 2006.

Msnr